

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 11, 2003

IN RE:

BELLSOUTH TELECOMMUNICATIONS, INC.  
TARIFF TO INTRODUCE SWA PRICING  
FLEXIBILITY – Tariff Number 2002256

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DOCKET NO.  
02-01073

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INITIAL ORDER ACCEPTING WITHDRAWAL OF PETITION

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This matter is before the Pre-Hearing Officer on the letter jointly filed by AT&T Communications of the South Central States, Inc., Birch Telecom, Inc. (collectively, the “CLEC Coalition”) and BellSouth Telecommunications, Inc. (“BellSouth”) on July 3, 2003, advising the Tennessee Regulatory Authority (“Authority” or “TRA”) that the matters at issue in this proceeding have been resolved. Consistent with the settlement, the CLEC Coalition seeks to withdraw the *Petition to Suspend Tariff and to Convene a Contested Case Proceeding* (“*Petition*”) that provides the basis for this proceeding.

**Background**

On September 20, 2002, BellSouth filed the Tariff at issue. The proposed effective date of the Tariff was October 14, 2002.

On October 7, 2002, the CLEC Coalition filed the *Petition*, alleging that the Tariff violated Tenn. Code Ann. §§ 65-4-124 and 65-5-203(a). The CLEC Coalition requested the Authority to suspend the Tariff, convene a contested case and require BellSouth to prove that the Tariff is just and reasonable.

At a regularly scheduled Authority Conference held on October 7, 2002, Chairman Sara Kyle and Directors Pat Miller and Ron Jones, the voting panel assigned to this docket, unanimously voted to suspend the Tariff for thirty days to allow sufficient time for BellSouth to respond to the *Petition*. The panel determined to consider whether to convene a contested case to address the issues raised in the *Petition* at the next regularly scheduled Authority Conference. On October 10, 2002, the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter ("CAPD") moved to intervene.

On October 14, 2002, BellSouth filed the *Answer to CLEC Coalition Petition to Suspend Tariff and to Convene a Contested Case Proceeding*. BellSouth denied each allegation in the *Petition* and opposed the CLEC Coalition's request to convene a contested case.

During the October 21, 2002 Authority Conference, the panel unanimously voted to convene a contested case, allow the CAPD to intervene and suspend the Tariff for an additional ninety days. In addition, the panel appointed the General Counsel or his designee to act as Pre-Hearing Officer to prepare the case for a hearing on the merits.

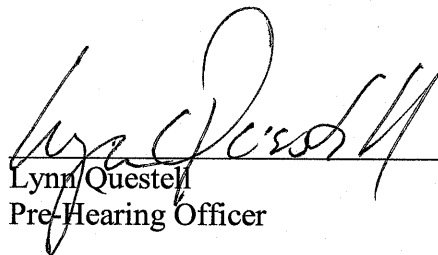
On January 30, 2003, the Pre-Hearing Officer issued a *Notice* establishing a Procedural Schedule. Upon the joint requests of the CLEC Coalition and BellSouth, the Pre-Hearing Officer continued the Procedural Schedule to facilitate settlement negotiations, which ultimately were fruitful, as evidenced by the above mentioned letter of July 3, 2003. The letter indicates that, pursuant to the settlement agreement, BellSouth is withdrawing the Tariff in its entirety and has filed a new tariff in another docket.

### **Findings and Conclusions**

The withdrawal of the *Petition* shall be treated as a preliminary motion as the panel has considered issues raised therein and CAPD has intervened.<sup>1</sup> BellSouth and the CLEC Coalition assert that the CAPD was sent a copy of the July 3, 2003 letter. No opposition to the withdrawal of the *Petition* has been filed.<sup>2</sup> The complainants maintain that the issues raised in the *Petition* have been resolved. Accordingly, the interests of justice and administrative economy will be served by accepting the withdrawal of the *Petition*.

### **IT IS THEREFORE ORDERED THAT:**

1. The *Petition to Suspend Tariff and to Convene a Contested Case Proceeding* filed by AT&T Communications of the South Central States, Inc. and Birch Telecom, Inc. is hereby withdrawn.
2. The Tariff filed in this docket (Tariff No. 2002-00256) is withdrawn.
3. Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.

  
Lynn Questell  
Pre-Hearing Officer

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<sup>1</sup> See *Bemis Co. v. Hinds*, 585 S.W.2d 574, 576 (Tenn. 1979) (filings must be disposed of based upon their substance rather than their title) *Starks v. Browning*, 20 S.W.3d 645, 652 (Tenn. Ct. App. 1999) (same).

<sup>2</sup> See Tenn. Comp. R. & Reg. 1220-1-2-.06(2) (establishing a seven day time frame in which to file responses to preliminary motions).